

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James R. Strong, #198044,)	
)	C/A No. 2:08-3133-MBS
Plaintiff,)	
)	
vs.)	
)	
Jon Ozmint, SC Dept. Of Corrections;)	
Bernard McKie, Kirkland Warden;)	
Michael Joseph, Prison Guard; Gary Lane,)	
Prison Guard and Captain; Kim Hill, Prison)	ORDER
Guard and Grievance Coordinator;)	
James Sleigh, Prison Guard; Robert Ward,)	
Deputy Director of SCDC; NFN Joyner,)	
a Deputy Warden; Linda J. Dunlap,)	
SCDC Nurse Practitioner; Eileen Delaney)	
Weiler, SCDC Nurse Practitioner; Larry)	
Kong, American Amenities, Inc.,)	
)	
Defendants.)	
_____)	

Plaintiff James R. Strong is an inmate in custody of the South Carolina Department of Corrections (SCDC). At the time of the underlying events, Plaintiff was incarcerated in the Maximum Security Unit of the Kirkland Correctional Institution in Columbia, South Carolina. Plaintiff filed the within complaint on September 16, 2008, alleging that his constitutional rights have been violated in various respects. Plaintiff brings this action pursuant to 42 U.S.C. § 1983.

This matter is before the court on motion for summary judgment filed by Defendant Larry Kong on January 19, 2009. By order filed January 21, 2009, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the summary judgment procedures and the possible consequences if he failed to respond adequately. Plaintiff filed a memorandum in opposition to Defendant Kong's motion on February 26, 2009.

Also before the court is motion for summary judgment filed by Defendants Ozmint, McKie, Lane, Hill, Sleigh, Ward, Joyner, and Dunlap (“SCDC Defendants”), which motion was filed May 20, 2009. A second Roseboro order was filed May 22, 2009. Plaintiff filed a memorandum in opposition to SCDC Defendant’s motion on July 29, 2009. Plaintiff filed additional attachments to his memorandum in opposition on August 4, 2009 and August 5, 2009.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. On August 31, 2009, the Magistrate Judge issued a Report and Recommendation in which he recommended that Defendants Joseph and Weiler be dismissed for want of personal jurisdiction, and that Defendants’ motions for summary judgment be granted. The Magistrate Judge further recommended that the complaint be denominated a “strike” for purposes of 28 U.S.C. § 1915(g), and that the court decline to exercise jurisdiction over any claims brought by Plaintiff pursuant to state law. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference, except as to the Magistrate Judge's recommended that Defendants Joseph and Weiler be dismissed pursuant to Rule 4(m), inasmuch as this portion of the Magistrate Judge's recommendation is moot. The court declines to deem the within action a "strike" pursuant to § 1915(g).

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

September 30, 2009

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.